

REMARKS

Reconsideration and withdrawal of the rejections of the application is respectfully requested in view of the amendments, remarks and enclosures herein.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 15-17, 19-21 and 23-35 are now pending. Claims 26-28 have been amended, and new claims 29-35 have been added, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims are and were in full compliance with the requirements of 35 U.S.C §112. In addition, the amendment and remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112; but rather the amendments and remarks herein are made simply to round out the scope of protection to which Applicant is entitled. Support for the amended claims is found throughout the specification, specifically on page 18, lines 9-15.

II. THE REJECTIONS UNDER 35 U.S.C. §112 ARE OVERCOME

Claims 25 – 28 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is respectfully traversed.

Specifically, the Office Action stated that the phrase “regular fabric” was not sufficiently defined to allow for the scope of the claims to be determined. The amendments herein have removed the phrase “regular fabric” such that the claims now refer to a “non-odor reducing fabric”. Applicant believes that this amendment adequately defines the scope of the claims such that one will recognize that the phrase refers to a fabric which has not been treated, altered, or manufactured in any manner to provide odor-reduction as a feature of the fabric.

Accordingly, the rejection to the claims is now moot. Reconsideration and withdrawal of the rejections under 35 U.S.C. §112, second paragraph, are respectfully requested.

III. THE ART REJECTIONS ARE OVERCOME

Claims 15 – 16, 19, 23 and 25 - 28 were rejected under 35 USC 103(a) as allegedly being unpatentable over Clarke (US 6,258,455). Claims 20 – 21 and 24 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Clarke (US 6,258,455) in view of Newman (US 6,000,057). Claims 15 – 17, 19, 23 and 25 – 28 are rejected under 35 USC 103(a) as allegedly being unpatentable over Gurian (US 5,856,005). And, claims 20 – 21 and 24 were rejected under 35 USC 103(a) as allegedly being unpatentable over Gurian (US 5,856,005) in view of Newman (US 6,000,057). The rejections are respectfully traversed.

The Examiner respectfully reminded that for a Section 103 rejection to be proper, there must be some prior art teaching which would have provided the necessary incentive or motivation for modifying the reference teachings to arrive at the claimed invention. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). Further, the Examiner is respectfully reminded that “obvious to try” is not the standard under 35 U.S.C. §103. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And, as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.” Also, the Examiner is additionally respectfully reminded that for the Section 103 rejection to be proper, **both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants’ disclosure.** *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

Furthermore, the Examiner is also respectfully reminded that MPEP 2143.01 mandates that for a Section 103 rejection, there must be some suggestion or motivation to modify reference teachings, and, that MPEP 2143.02 further mandates that for a section 103 rejection, there must be a reasonable expectation of success.

And the Examiner is respectfully reminded that 35 USC 102 begins with the mandate that the Applicant shall be granted a patent, i.e. that the PTO bears burden to fully support any rejection, that the standard is a “preponderance of the evidence standard”, and that if the

Applicant merely meets the rejection (or even ever so slightly tips the scales in his favor), the PTO must allow the application and issue the patent.¹

Turning first to the rejections based on Clarke, Applicants acknowledge that Clarke relates to an antimicrobial material having at least one yarn having fine fiber of 1.0 denier or less, wherein the material is to be used for cleaning. Applicant again respectfully submits that Clarke, in requiring the use of microfibers in the material, inherently provides a material that would not be suitable for use in the present invention. Therefore, one of skill in the art would have no motivation to modify Clarke to arrive at the present invention.

As previously stated, microfibers have unique characteristics that are not shared by larger fibers, and vice versa. Microfibers provide an extremely absorbant material which has a soft and silky feel. These fibers would not be useful in the present invention, where the use as a hunting garment requires a fabric that will not be highly absorbant and wherein strength and stability will be of great importance. There would be no motivation for one of skill in the art to attempt to adapt the microfiber cloth of Clarke, either alone or in combination with any other references, into a rugged fabric for use in hunting garments and related materials.

Indeed, the amendments herein have specified that neither the polyester fiber nor the acetate fiber of the odor-reducing fabric of the present invention are microfibers. The recitation that the fibers of the present invention are not microfibers therefore excludes the fine fibers of 1.0 denier or less of Clarke. Accordingly, Clarke does not teach the present invention; nor does Clarke provide any motivation or suggestion to modify prior art teaching to arrive at the present invention.

Furthermore, Applicant respectfully submits that neither is there any motivation for the combination of Newman and Clarke, nor is there a likelihood of success indicated by either document.

Newman involves “hunting apparel comprising an article of clothing constructed with an inner layer of an antimicrobial fabric and outer layer of an odor-absorbing material.” The Office Action maintains that because the material of Clarke is “suitable for a variety of applications and comprises antimicrobial fibers” it would be obvious to use the material of Clarke in the hunting

¹ In this regard the Examiner is respectfully invited to consider particularly that Applicant has submitted evidence in this prosecution, including a herewith Declaration; and, that Applicant’s arguments of record, it is respectfully submitted, are persuasive (or at least as persuasive as the Examiner’s assertions - i.e. either tip the scales even or in

apparel of Newman. Applicant again respectfully disagrees. However, as discussed above, Clarke relates to a material made of microfibers, and the amendments to the claims herein recite that the fibers of the present invention are not microfibers. Newman does not teach or suggest the use of acetate and polyester fibers which are not microfibers, such that Newman does not remedy the deficiencies of Clarke.

Furthermore, Newman appears to maintain that his patent covers the Contain™ line of clothing. Submitted under separate cover is a Declaration by the inventor that describes the results of comparative tests between the fabric of the present invention, traditional fabric, and that of the Contain™ line. In all tests, the fabric of the present invention greatly reduced the odor emitted when compared to the alleged Newman fabric and to a traditional, non-odor reducing fabric. Accordingly, not only is there no motivation to utilize the material of Clarke in the apparel of Newman, as well as no motivation to modify the material of Clarke to exclude microfibers, the present invention provides significantly surprising and superior results over the fabric of Newman.

Turning now to the rejections based on Gurian, the Office Action again admits that Gurian fails to disclose that the fabric can be an odor-reducing fabric but states that Gurian meets all of the claimed structural and/or chemical limitations. Applicant respectfully disagrees and maintains that Gurian relates to an anti-microbial and permanently flame-retardant fabric that would lose its required flame retardant properties if it were to encompass the at least 25% by weight acetate that is required by the present invention. Accordingly, Gurian cannot be enabled for a fabric containing at least 25% by weight acetate as such a high percentage of acetate would prevent the fabric from retaining the flame-retardant properties required by Gurian.

Moreover, new claims 34 and 35 have been added herein and are not obvious over Gurian. Claim 34 requires that the acetate and polyester fibers be air-entangled such that the polyester forms a core around which the acetate fiber is bound. Support for the recitation can be found in the figures. In contrast, Gurian states that "The yarn 10 was co-air-textured with base filaments (which form the core 12) formed of a plurality of the permanently flame-retardant filaments 16 and a pair of effect filaments (which form the sheath 14)--one of the plurality of permanently flame-retardant filaments 16 and one of the plurality of permanently anti-microbial

Applicant's favor), such that it is respectfully further asserted that by the mandate of the statute the application must be allowed, and such a result is respectfully requested.

filaments 18." Namely, Gurian teaches that the polyester and acetate are first entwined, and then the polyester/acetate blend is air-entangled with polyester such that the resulting combination comprises a polyester core have bound thereto a polyester/acetate blend. Gurian does not teach or suggest solely having acetate bound to a polyester core, and therefore does not anticipate claim 34.

Additionally, claim 35 recites that the acetate fiber having blended therein an anti-microbial is effective as an anti-microbial after 200 industrial washings. In contrast, Gurian teaches only that the anti-microbial effect lasts for 100 commercial launderings. Accordingly, the present invention is not taught or suggested by Gurian.

As none of the deficiencies of Gurian are overcome by the teachings of Newman (which, as stated above, is of inferior effectiveness in comparison to a product made in accordance with the present invention), the present invention is patentable and nonobvious over Gurian, either alone or in any combination.

It is respectfully asserted that by no less than evidence and assertions equal to that provided by the PTO in making the Section 103 rejections - and indeed by a preponderance of the evidence assertions beyond that provided by the PTO in making the Section 103 rejections - Applicant has addressed and overcome the Section 103 rejections.

Therefore, for all of the reasons set forth above, and in the Declaration provided under separate cover, and the record overall, the Section 103 rejections cannot stand; and, reconsideration and withdrawal of the rejections under 35 USC103 are respectfully requested.

REQUEST FOR INTERVIEW

If any issue remains as an impediment to allowance, prior to issuance of any paper other than a Notice of Allowance, an interview, is respectfully requested, with the Examiner and her supervisor, and, the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.²

² In this regard, the Examiner is respectfully reminded that Applicant through this record has endeavored to advance prosecution, such that if any issue does remain, it is fervently believed that such can be readily resolved via an interview; and, it is hoped that the PTO is of the same view, and will call the undersigned if there is any remaining issue.

CONCLUSION

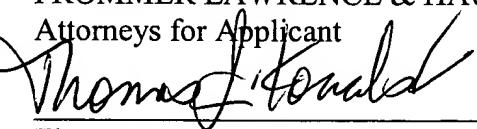
In view of the remarks herewith and those of record, the application is in condition for allowance. Favorable reconsideration of the rejections of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

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